

**IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE MIDDLE DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

RUTHIE L. WINDSOR,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.: 1:05-cv-1196-MEF
	)	
FRANCES J. HARVEY, Secretary of,	)	
the Army,	)	
	)	
Defendant.	)	

**REPLY TO PLAINTIFF'S FAILURE TO RESPOND TO DEFENDANT'S  
MOTION TO DISMISS, OR IN THE ALTERNATIVE,  
MOTION FOR SUMMARY JUDGMENT**

Comes now the defendant, by and through Leura G. Canary, United States Attorney for the Middle District of Alabama, and in reply to the plaintiff's failure to respond to the defendant's Motion to Dismiss, or in the alternative, Motion for Summary Judgment (Docs. 14 & 15), states as follows:

1. Section 2 of the Uniform Scheduling Order required all dispositive motions to be filed on or before October 24, 2006 (Doc. 10). The defendant timely filed his dispositive motion and supporting materials (Docs. 14 & 15).
2. On October 27, 2006, this Court ordered the plaintiff to file a response to the defendant's dispositive motion on or before November 13, 2006 (Doc. 16). The same order gave the defendant until November 20, 2006, to file any reply he may have to the plaintiff's response.

3. To date, the plaintiff has not filed any response to the defendant's October 24, 2006, dispositive motion.

4. Section 6 of the Uniform Scheduling Order states, "[t]he failure to file a response to any motion -- either dispositive or non-dispositive -- within the time allowed by the Court shall indicate that there is no opposition to the motion."<sup>1</sup>

5. In accordance with the above, the plaintiff has indicated that she has no opposition to the defendant's Motion to Dismiss, or in the alternative, Motion for Summary Judgment.

WHEREFORE, premises considered, the defendant's Motion to Dismiss, or in the alternative, Motion for Summary Judgment is due to be and should be granted and this case dismissed with prejudice.

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<sup>1</sup> In a similar context, the Eleventh Circuit Court of Appeals has held that a Court has the power to grant an unopposed motion for summary judgment pursuant to its local rules provided that the non-movant was put on notice that failing to respond to the motion could result in the Court granting the motion for summary judgment as unopposed. See Burton v. City of Belle Glade, 178 F.3d 1175, 1203-4 (11<sup>th</sup> Cir. 1999); Dunlap v. TransAmerica Occidental Life Ins. Co., 858 F.2d 629, 632 (11<sup>th</sup> Cir. 1988).

Respectfully submitted this 20<sup>th</sup> day of November, 2006.

LEURA G. CANARY  
United States Attorney

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 20, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to Plaintiff's attorney, Henry L. Penick, Esq.

/s/R. Randolph Neeley  
Assistant United States Attorney